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CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 683

THE UNITED STATES OF AMERICA

vs.

ADA L. BURROUGHS AND JAMES CANNON, Jr.

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

FILED FEBRUARY 10, 1933

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1 In Court of Appeals of the District of Columbia

No. 5653

UNITED STATES, APPELLANT

v.

ADA L. BURROUGHS AND JAMES CANNON, JR.

CERTIFICATE

Filed Feb. 9, 1933

Statement of case

The Court of Appeals of the District of Columbia certifies that the record in the above-entitled case discloses the following:

Appellee Ada L. Burroughs, as treasurer of a political committee, known as the headquarters committee anti-Smith Democrats, is charged in the indictment returned October 16, 1931, by a grand jury of the District of Columbia, under the Federal corrupt practices act of February 28, 1925 (U. S. C., title 2, chap. 8), with failure to file with the Clerk of the House of Representatives of the United States written reports of contributions alleged to have been made by one E. C. Jameson for said political committee. Appellee James Cannon, jr., is charged, in each count, with aiding and abetting appellee Burroughs in failing to file such reports. It is charged that the money was contributed for the purpose of influencing and attempting to influence the election of presidential and vice-presidential electors in two States.

The indictment contains ten counts. The 1st, 3rd, 5th, and 7th counts charge the appellees with feloniously failing to file the reports on the different dates specified in the statute.

The 2nd, 4th, 6th, and 8th counts charge the appellees with
2 unlawfully failing to file reports on the respective dates specified in the statute.

The 9th count charges the appellees with conspiring to commit the substantive alleged felonies charged in the preceding 1st, 3rd, 5th, and 7th counts by failing to file the reports on the dates specified, while the 10th count charges a conspiracy to commit the substantive misdemeanors charged in the preceding 2nd, 4th, 6th, and 8th counts by failing to file reports on the dates specified.

The first count of the indictment is as follows:

"The grand jurors for the United States of America, empaneled and sworn in the Supreme Court of the District of Columbia, holding a criminal term at the October term of said court in the year 1931, and inquiring for said District of Columbia, upon their oath present that Ada L. Burroughs, late of the District of Columbia, throughout the period of time extending from July 22, 1928, to and

including March 16, 1929, was the treasurer of a certain political committee which then accepted contributions and made expenditures for the purpose of influencing and attempting to influence the election of presidential and vice-presidential electors in two States, the name of which said committee then was 'headquarters committee anti-Smith Democrats'; that at divers times during said period of time contributions of money were made by one E. C. Jameson, of New York City, New York, for said political committee, as shown by the following table:

$10,000.00	September 18, 1928	$5,000.00	October 16, 1928
$10,000.00	September 28, 1928	$8,000.00	October 19, 1928
$10,000.00	October 9, 1928	$10,000.00	October 19, 1928
$5,000.00	October 16, 1928		

and that it thereafter, and during said period of time, to wit, between the 10th and 15th days next preceding November 6, 1928, the date on which a general election was held at which candidates and presidential and vice-presidential electors were elected in the several States of the United States, became and was the lawful duty of said Ada L. Burroughs, as such treasurer of said political committee, to file with the Clerk of the House of Representatives of
3 the United States a statement, complete as of the day next preceding the date of the filing thereof, if it should be filed, containing the name and address of said E. C. Jameson, the person who made said contributions for said political committee as aforesaid, together with the amount and date of each of said contributions.

"And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Ada L. Burroughs, during said period of time, and while she was such treasurer of said political committee, to wit, at all times between said 10th and 15th days next preceding said November 6, 1928, unlawfully and feloniously did willfully violate a certain provision of chapter 8 of title 2 of the United States Code, to wit, the provision in section 244 of said title requiring her, as treasurer of said political committee, to file with said Clerk of the House of Representatives of the United States, between said 10th and 15th days next preceding said general election, a statement pertaining to the contributions aforesaid and containing the information aforesaid, by them and there unlawfully and feloniously willfully failing to file with said Clerk, to wit, in said District of Columbia, any such statement, or any statement whatever, pertaining to said contribution, containing any such information. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that James Cannon, jr., during said period of time, to wit, between said 10th and 15th days next preceding said general election, at and within said District of Columbia, then and there well knowing all the premises aforesaid, and well knowing said Ada L. Burroughs to be such treasurer of said political committee, and to be required by law, as such treasurer, to file such statement pertaining to said contributions of said E. C. Jameson for said political committee with said clerk, unlawfully and feloniously did willfully aid, abet, counsel,

command, induce, and procure, and advise, incite, and connive at the commission of the above-described offense on the part of said Ada L. Burroughs of willfully violating said provision of said chapter 8 of said title 2 of said United States Code, and so then and there was a principal in the commission of that offense.

"Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided."

The second count of the indictment eliminates the words "and feloniously willfully," charging only that the violations of the Act were unlawfully done; and the remaining counts of the indictment are respectively similar.

4 On November 2, 1931, defendants Burroughs and Cannon, by counsel, filed a demurrer to the indictment and to each and every count thereof, and assigned as grounds of demurrer, first, that the act of Congress entitled the "Federal corrupt practices" act, in section 244 thereof was a violation of section 1 of Article II of the Constitution of the United States and was also in violation of articles 5, 9, 10, and 12 of the amendments of the Constitution of the United States, and in addition assigned as further grounds that the indictment was insufficient to inform the accused of the nature and cause of the accusation against them, and particularly that the indictment failed to contain facts to show that the alleged contributions were ever received by the treasurer (Burroughs) or that the treasurer (Burroughs) ever had any knowledge of any such alleged contributions.

On February 15, 1932, the trial court sustained the demurrer and quashed the indictment, saying in a memorandum opinion that it was unnecessary to pass upon the constitutional question presented by the demurrer and based its decision on the other grounds assigned as follows:

"Among the latter objections [the insufficiency of the indictment] it is contended that no offense has been stated because of the failure to allege as a fact that the Jameson contributions were reported and accounted for to Burroughs, treasurer, or that she had knowledge thereof. It is insisted that such an allegation is necessary because the true meaning and intention of section 244 of the act requires the treasurer of a political committee to report only such contributions as are received directly by him and those received by others which have been duly reported and accounted for to him; and further, at all events the indictment should show that the treasurer had knowledge of indirect contributions before being chargeable with a failure to include them in the statements which he must file under the law.

5 "In my opinion these objections are well taken. A consideration of section 244, in the light of all other related provisions of the act, leads fairly to the conclusion that the legislative intention is to require the treasurer of a political committee to report

only contributions received by him and those duly reported to or accounted for to him. Certainly it was not intended to hold one criminally responsible for failure to report a contribution of which he had no knowledge. This is a proposition advanced by the Government to which I can not assent. It calls for an unreasonable and harsh construction which is neither warranted by the nature of the act, its language, nor its intent. Given such a meaning, a treasurer who had filed a statement honestly and correctly, revealing every contribution known to him, would nevertheless be liable to prosecution because of an inevitable omission of a contribution made for the committee to another of which he had no knowledge. No such unjust purpose can be attributed to this legislation.

"Nor can I accept the alternative contention that those counts which charge a wilful failure by Burroughs to report contributions made for the committee impute to her knowledge of contributions received by another. The term 'wilful,' as used in these counts, is merely an adoption of the word employed in section 252 to differentiate in the penalties between a purposed and intentional violation of the act and one occurring thoughtlessly or accidentally through inadvertence or mistake. The reasoning and authorities in support of these theories are, I think, based upon fundamental misconceptions.

"In my judgment, for the reasons mentioned, all counts of the indictment as drawn fail to allege facts essential to constitute any criminal offense. The demurrer must, therefore, be sustained as to each count. An order will be entered accordingly."

From the judgment sustaining the demurrer and quashing the indictment entered by the lower court February 15, 1932, an appeal to this court was noted on the same day in open court by the United States, and the record on appeal was filed in this court on April 11, 1932, or more than thirty days after the entry of the judgment appealed from.

On this appeal, appellees contend that this court is without jurisdiction to review the action of the lower court on the demurrer because the appeal from the judgment of the lower court was required
to be taken direct to the Supreme Court under the provisions
6 of the criminal appeals act of 1907 (act March 2, 1907, 34 Stat. 1246), and in support of this contention appellees point to the memorandum opinion of the trial judge to sustain their position that the judgment sustaining the demurrer to the indictment was based upon the construction of the statute upon which it was founded. On the contrary, the United States insist the action of the lower court was based upon the insufficiency of the indictment as a pleading.

If the position of either appellant or appellees could be conceded, the duty of this court on the jurisdictional question would be clear (U. S. v. Stevenson, 215 U. S. 190), but as it appears to this court that the court below proceeded upon two grounds in sustaining the

demurrer, on one of which it based its decision on the construction of the statute, i. e., in construing the statute as requiring knowledge of the contribution as a necessary ingredient of the offense, and on the other of which it based its action on the invalidity of the indictment upon general principles of criminal law, i. e., in holding that to charge the offense as wilfully done was not sufficient to charge defendants with knowledge, etc., this court is in doubt whether, in such circumstances, in view of the provisions of the criminal appeals act, an appeal will lie to this court, and, if it will lie, whether this court on such appeal is confined solely to a determination of the correctness of the ruling of the lower court in quashing the indictment on the ground that it was insufficient as a criminal pleading; or, in other words, whether the failure of the United States to appeal
7 directly to the Supreme Court on the construction of the statute is an abandonment of its contention that the construction of the lower court in that respect is wrong, or whether the right to appeal on that subject alone to the Supreme Court takes away from this court jurisdiction to review that question on an appeal otherwise properly taken. And being so in doubt as to its jurisdiction to entertain the appeal, as well as to its jurisdiction in relation to the question last hereinbefore mentioned, this court respectfully certifies the following questions of law arising upon the record, a decision of which is necessary for a proper disposition of the case to the end that a correct result may be reached, and desires the instruction of the Supreme Court of the United States upon said questions, to-wit:

Questions Certified

Question No. 1: Where on a criminal indictment a demurrer is sustained and the indictment quashed on two grounds, one involving a construction of the statute and the other the interpretation of the indictment as a pleading, will an appeal lie at the instance of the United States from the trial court of the District of Columbia to the Court of Appeals of the District of Columbia?

If question No. 1 be answered in the affirmative, then

Question No. 2: May the Court of Appeals of the District of Columbia on such appeal review the ruling of the trial court based on the construction of the statute?

GEORGE E. MARTIN,
Chief Justice.
JOSIAH A. VAN ORSDEL,
Associate Justice.
WILLIAM HITZ,
Associate Justice.
D. LAWRENCE GRONER,
Associate Justice.

Justice Robb, being disqualified, did not sit in this case.

[File endorsement omitted.]

8 [Clerk's certificate to foregoing omitted in printed.]

[Endorsement on cover:] Enter Attorney General. File No. 37380. District of Columbia, Court of Appeals. Term No. 683. The United States of America vs. Ada L. Burroughs and James Cannon, jr. On certificate. Filed February 10, 1933. File No. 37380.

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